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THE DANGERS OF CHURCH CENTRALIZATION.

SOME REMARKS

ON THE

Proposed Changes in the Constitution

OF THE

PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES.

BY A LAYMAN.

"Voluntas leges Angliæ mutare."

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The Dangers of Church Centralization.

6-8-33 11:12
ANOTHER session of the General Convention is at hand, and the matters likely to be brought before it should direct the attention of all Churchmen to the tendency of our legislation, and the objects and nature of our ecclesiastical union. For, not only have theories been advanced which, to some minds at least, appear highly dangerous, but those theories are being carried into practice in such manner as to endanger the independence of every diocese.

It has been distinctly laid down by an eminent writer, that the General Convention (except where *expressly restricted*) possesses the absolute and unqualified power of legislating upon all ecclesiastical matters; and that, while the dioceses may legislate on subjects touching which the Convention is silent, nevertheless, "when an act of the General Convention upon such a matter is passed, it becomes the supreme law; superseding what has been done in a diocese, or any power of a diocese at variance with it, and superseding the right to make any similar provision in a diocese *ad idem*; but abridging the power of the dioceses only so far as the law by just intendment extends." [HOFFMAN'S Law of the Church, p. 117.]

In plain English, the General Convention has the power to legislate upon all subjects, and may, if it see fit, leave no matter whatever upon which the dioceses shall have any right to act. This theory has certainly the merit of being as plain and comprehensive as the old doctrine of *Sic volo, sic iubeo*

There are, however, one or two restrictions in the Constitution upon the powers of the General Convention, which would seem to ordinary and vulgar minds to operate as a slight check, at least, upon them. But here, again, we have a construction put upon it which leaves the Convention at full liberty to amend even the Constitution at its own good pleasure, whether the dioceses acquiesce or protest. The whole theory, taken together, is certainly one which, if untrue, should be put down, and, if true, should be fully understood, that we may know upon what terms we hold our liberties. And we propose to show some of the results which may be expected, as well as those which have resulted, from the workings of this plan.

It is a political axiom, that unchecked power is not only liable to abuse, but, sooner or later, will be abused inevitably. It is a dangerous weapon to handle. Like children, its possessors can not avoid trying it, in order to realize that they have it. Of course, it is to be hoped, and perhaps presumed, that the members of an Ecclesiastical Convention, having no temporalities to quarrel over, would not be likely to act improperly when assembled for purely religious objects; but the debates in our General Convention show that this hope is sometimes misplaced, and that passion and rancor have made their appearance even in that august assembly.

But, are the matters over which the General Convention, under the broad claim referred to, or even under the most moderate claim that can be set up, has cognizance, such as to prevent the probability of abuse under all circumstances? A very superficial acquaintance with history must show the reverse to be true. In what manner did heresies and corruptions enter the early Church, except through the action of men who were; not only members of the Church, but ministers at its altars? How was it that the gigantic system of lies, the Papacy, came into being? The ordained ministers, the consecrated bishops, are answerable. Is it not, therefore, a little presumptuous to assume that a spirit of sanctity, and, to speak plainly, an infallibility in judgment, and in temper also, will prevail in our council, and that here, only, will power never be abused?

Where is the famous *odium theologicum* to be banished? The disputes of theology are more bitter, and more unscrupulous too, than any others. And, surely, Catholic Unity has not so far prevailed as to harmonize entirely all our views. The words—far from

honied—which our Church newspapers fling at their adversaries, and the objects at which their amiable editorials are directed, are not indicative of the absence of all uncharitableness. The partizan spirit which disgraces the trials of the Church is not confined to the halls of justice. Every one knows that there are differences of opinion maintained, not only with obstinacy, but with unseemly bitterness; which have only produced no great harm in the General Convention, because that body has abstained from meddling with local affairs to any very great extent—an abstinence which will not be of long duration if it is conceded that it need not be maintained. Is it possible, that men who hold these discordant opinions, as we are bound to believe, honestly, and who, as honest men, are bound to carry them out, can meet in an arena open to such conflicts, and not commence them? It is absurd to suppose it.

But doctrinal points and the bickerings of extremists are not the only sources of difference which may, and are likely to, arise in a Convention competent to discuss them. There are other matters of the most exciting and dangerous kind, which have appeared in the meetings of other denominations, and have only been kept out of ours by the notion that there were some things over which the General Convention had no control. And we may rely upon it, that there will be less caution on this subject, if the doors are to be thrown open to every subject. This country, as we all know, has many conflicting local interests which can not be touched without causing a contortion; and in the Church, as well as out of it, there are many persons who feel very strongly on these subjects. How long could these topics be discussed calmly before a body *having powers to settle them?* The Methodist Church—whose organization is certainly powerful enough—could not withstand the riving force of this wedge. The moment our Church should proceed to make any canon for the regulation of religious matters in the South to harmonize with their institutions, there would be some, at least, to question its propriety. And if it should lean the other way, and legislate on the policy of those institutions, there would be a dead certainty of a division. And who can measure the ruinous consequences, short of dissolution, which would result to the Church from having her children arrayed against each other in struggles involving, not only differences of opinion, but of interest. Charity

may dwell with dissenting views, but has no chance with adverse interests. So long as men are fallible and frail, unity is no easy thing to bring about.

There are some dangers of a character quite as serious, of which we have already seen the harbingers. A Church organization possessing the powers of action must, like all other bodies, take to itself the means of exercising it. As the Church increases, the calls upon its authority will multiply. *Who are to be its executive officers?* Shall the presiding bishop possess the sword and keys? Shall executive committees assume to govern the Church, and make the common people wonder why it is called the "Episcopal" Church? Our dioceses can not get along without their permanent committees; to say nothing of the standing committee in each; and there is usually some interest felt when they are elected. When the Church-at-large gets her standing committees (which will be needed if some men are permitted to carry out their plans), we shall see a field opened to an ambition which may be well enough in secular affairs, but which ought not to strive in holy things, and which will not tend to apostolic simplicity. Nor is this all. There will be no check on the increase of dioceses. Men who have been content to perform their duty as rectors, and won honest love and admiration in some moderate sized city, will be gently agitated by a longing for the mitre; which bids fair to be cheapened in like manner as the once proud titles of military chieftains have been by our militia system, until bishops and generals shall equally abound. And this not the worst; for in the General Convention, the diocese of Dodgeopolis has an equal voice with that of Virginia. And what chance has a farming or planting State, with one bishop and one set of delegates, when its interests or views conflict with those of another which is represented by half a dozen sets of diocesan delegates?

It will not do to say, that here are no pecuniary interests to corrupt men, or that it can not be possible for such men as are sent to the Convention, to legislate or act so as to deserve reprobation. Money is not the only thing which swerves men from duty. It is not even necessary that they should be operated upon by any motive which is directly reprehensible. Jesuitism is a self-deceiving spirit: and when Satan attacks a good man, or wants his influence, he wears the garb of an angel of light. Honesty is so beautiful, that no public

body is likely to fly in its face; and it is only by assuming its garb, or following apparently in its steps, that any measure can be passed. In religious matters, especially, the origin of evil movements is oftener found in misguided zeal than in designing knavery.

Nor is it safe to believe that every measure proposed, is tried by the deliberate judgment of so many persons, that what they all coincide in can not well be very much out of the way. If there are persons who entertain such opinions, they can not have seen, or participated in, the proceedings of public bodies. All movements originate with a few individuals, who mature their plans and concentrate their forces with caution and deliberation. Those who advocate, and those who oppose them, may examine into the merits of the subject; but the large majority act, either upon superficial impressions, or upon their confidence in the leaders who adopt either side. Many of these plans are matured months before a Convention meets, and put into shape by a knot of men residing near each other, and having common tastes and opinions, or common interests. Many measures are brought forward, to which, in themselves, there appears to be no well-founded ground of opposition; and it is not until linked in with other things which, alone, appear equally harmless, that any one can perceive that there is danger in either. And in the hurry and bustle of debate (to call which deliberation is a great misnomer), there is not time, or opportunity, for members who are unfamiliar with the questions in controversy to satisfy themselves thoroughly about them. There is altogether too much blind confidence among the members of all our public bodies; and the caucus system, in a modified form, is just as busy and as effective in the Church Conventions as in political bodies.

Nor have we escaped that miserable bane of republics,—over-legislation. Every man who is sent to a legislature, or a convention, seems to think he is sent there to make laws, and that if he does not get up some new proposition, he will be regarded by his constituents as unfaithful. Hence, we seldom allow any enactment to be fairly tried before we amend it, or repeal it, and try some thing else in its stead. And these amendments do not come from those who have occasion to know the practical operation of the laws that are meddled with: they are generally the work of uneasy and opinionated

theorists, who think there is nothing which can not be improved by their superior wisdom. We have in the Church numbers of men of exalted piety, but no great practical talent, who feel that they have a mission to perform, and let the idea buzz in their brains, until it flies forth in the shape of some comprehensive theory, which they desire the Church to adopt and carry out. And we have other men, who, having spent active lives in various business pursuits, and at last retired with a competence, growing weary of doing nothing, set about managing Church affairs as they do their model farms; whose expenses double the income, and yet they give their owners the most unbounded satisfaction as highly successful experiments. A little wholesome neglect, to allow us to recover from the inordinate applications of such quackery, is sometimes a great relief.

The tendency in all such bodies as our General Convention, is to centralize power; and unless there are well-defined checks and barriers to it, we can not avoid its dangers. A centralized ecclesiastical power is an unqualified evil, and as surely results in corruption as if that were the goal of its ambition. A very superficial glance at the history of the American Church will show, that we have been drifting with accelerated velocity towards this danger, with almost the drowsy indifference of the lotus eaters.—

“Let us alone. What pleasure can we have
To war with evil? Is there any peace
In ever climbing up the climbing wave?”

When the first steps were taken to form a Church Union, each State had its own Church; which was, to all intents and purposes, a National Church, and was so regarded. Each State might have any number of dioceses within it. In the General Convention—no matter how many dioceses there might be within it,—each State was entitled to but one body of delegates. The Church Constitution, like that of the Government, did not seek to interfere with the political theory, that each State is sovereign in all local matters. Even the trial of bishops remained within the States until 1841, when, by reason of the change which had been made in 1838, allowing *dioceses* to be represented in the General Convention, a necessity arose for such a provision. The amendment of 1838, whereby this change was brought about, was the first great step in the onward

course of centralization; and it is singular that it passed with so little comment. It broke down one of the strongest barriers against aggressive encroachment, and opened the way for all that has since been attempted to swallow up the local churches in one great consolidation. The moment this step was taken, there arose a necessity for doing what has not yet been perfected,—namely, defining what shall constitute a diocese. Before, there was no difficulty. The Churches of New York and Delaware were, within their peculiar spheres, as equal as those of England and Scotland. If New York was too large for one bishopric, it could have two; and when it had made two, it did not interfere in any way with the power or prosperity of the Church in Delaware. But when New York, by dividing, was enabled to outvote Delaware in a Convention representing them both, it became a serious matter. One false move produced another.

For the management of its internal affairs, a diocese need be of no particular size: it should be such as to give the necessary field for a bishop's labors; and this depends more on churches than territory. But to make every diocese independent of territory was then supposed, and we think justly, entirely unfair as a basis of representation; because the dioceses, like the people, of one State would naturally hang together, and so exercise an undue preponderance over single dioceses. Principle was compromised for expediency; and dioceses were required, when less than States, to be of a given size. This change, while it deprived the local churches of their equality, took away likewise one important feature of every National Church,—namely, its jurisdiction over all ecclesiastical offenses committed within its borders. As a bishop can only be tried in a court where bishops sit, of course the trial of bishops was no longer properly within the States; and as soon as this was practically brought to the attention of the Church, the jurisdiction over them was assumed by the General Convention. In other respects, the dioceses retained the former power of the States.

Various attempts have been made to abridge this power; but at the last General Convention alterations were proposed, which, if adopted, will leave the dioceses no authority whatever worth having. Three changes are proposed to be made in the Constitution. Article Second is amended by requiring delegates to the

General Convention to be communicants. Article Fifth is amended, by allowing new dioceses to be formed without reference to territorial limits, where they shall contain fifteen presbyters and as many self-supporting parishes; the only restriction being, that there shall be but one diocese in one city. Article Sixth is amended so as to give the General Convention exclusive power over the trial of clergymen, whenever it sees fit to assume it. (In anticipation of the passage of this amendment, several schemes, or codes, have already been offered.)

If it be true, as Mr. Hoffman claims, that the General Convention is the ultimate repository of ecclesiastical authority in the Church, and that the dioceses have only such exclusive powers as the Constitution gives them, then we can not deny that these amendments are perfectly in keeping with such a theory. But if this be so, there is room for the inquiry, whether this is a plan that should be allowed to obtain any longer.

If, on the other hand, the Church government was intended to be modeled after the plan of our secular one, with a General Convention to transact only such business as could not properly be done by the States or dioceses, then these proposed amendments are such as to operate an entire destruction of this system, and change the whole form of Church polity. And, as such, they involve more than one question of the most serious moment. Whenever action is now, or hereafter, to be invoked upon, or under, them, it will be necessary to inquire, *first*, whether these measures are wise and expedient; and whether they are likely, or unlikely, to disturb the serenity of the Church, or unduly centralize and corrupt it: *second*, whether these propositions have been so brought before the dioceses, and acted on by them, that they can legally be adopted by the General Convention: and, *third*, whether it is in the power of either the dioceses or the General Convention, without violating the fundamental principles of our polity, to adopt any such measures. Nor do we suppose that either of these inquiries can lightly be passed over by any friend of the Church.

The dioceses have, from the beginning, chosen their own representatives. There is no good reason for debarring them from freedom of choice. So long as the Church remains uncorrupted in any diocese, there is no danger that it will stultify itself by selecting delegates of

an unworthy character. When it becomes corrupt, the mere fact that its delegates are communicants will not save them from the same suspicion. Every office-holder in England, of any standing, has been required to be a communicant; and the fact that such a requisition has been made, has brought to the altar many unworthy persons who, but for this inducement, would never have enacted a solemn hypocrisy. If being a communicant is to add to public honors here, then there is some danger of a similar result. But upon what principle is it that any church member is to be disfranchised? Every baptized person is a member of the Church; and if the Diocesan Conventions see fit to entrust their representation to such, they should be permitted to judge for themselves of their propriety. While we readily admit the duty of churchmen to partake of the Communion, and to do so only with fit preparation, yet it is very well known that many, from mistaken notions and an over-scrupulous conscience, abstain from so doing, when their christian character is undoubted, and their ability and disposition to serve the Church are great. Some of the most valuable members of all our General Conventions have been non-communicants. Our vestrymen are not required to commune. Even the standing committees, whose duties are to a considerable extent of a purely ecclesiastical character, and who have some of the powers of a bishop in vacant dioceses, need not be communicants. If the experience of the past sixty-five years, and more, had shown the dangers of adhering to the present system, or if any appreciable evil had grown out of it, there might be more reason for the proposed innovation. But no such evils have been experienced, or pretended. It is not demanded by principle; for the officers of the Church are not confined by any such principle, and her members are not initiated through such terms of membership. This change does not fall within the dangers which beset us from the other two amendments; but there should be some cogent reason given for a change affecting the right of a diocese to choose its own representatives. And there have always been feeble dioceses which would be deprived of at least a portion of their delegates for years, by any such regulation.

The admission of dioceses to a full representation, without regard to territorial extent, is a great and palpable evil. In the older and more populous States where great cities are found and wherein are

many cities of less size which, with their suburbs, are populous enough for dioceses under the proposed rule, a power is concentrated which, even at present, has wonderful influence in the Councils of the Church. Citizens of the same State have so many ideas and feelings in common, moulded into uniformity by the daily experience of civil affairs, that in all other matters they are likely to sympathize; and experience has shown that they do sympathize in Church affairs. There are few measures proposed, and certainly few that stand any chance of success, without the support of the delegations from the principal States. They lead in the debates; and very frequently, if not generally, the votes of the Convention show the contest to be between two such States in reality, while the delegations from elsewhere are marshaled with the one or the other, and only swell their trains. It may be said, that this is no more than is due to the commanding intellects which are to be found in the principal dioceses, and that their influence is derived from their intellectual supremacy. To some extent this is true; for their wealth will command high talent; and the minds which excel the rest in such communities must naturally be very superior. Yet this theory does not account for it sufficiently. The measure of great men in our National Councils shows that mental supremacy is by no means confined to such States, or to the great cities in them; the true solution of the question will be found in the fact, that our great cities are the centers of organization of those bodies in the Church (unknown to its Constitution but not averse to tampering with it) called religious parties;—bodies to which no test of baptism, or communion, or holiness of life, will be found to bar the door of admission.

The very existence of such parties, with their organs of the press, creates a system of tactics, not always very scrupulous, which enables their members to be leaders in any public body where they may be found. Even where their measures proposed separately to the various members of a Convention would not command the assent of a majority, they are carried upon a vote, because there is no well-organized opposition. Whatever may be the decision upon the old debating-society question, "*Are parties beneficial?*" there is no doubt that in the Church they have been the cause, not only of "envy, hatred, and malice, and all uncharitableness," but also of scandal. Their extreme views and acts have broken up churches subverted

order, and, what is infinitely worse, poisoned the fountains of justice. As soon as one party moves in one direction, the other at once seeks its antipodes; until we find them swinging from the near confines of irreligion on the one hand, to those of heresy on the other. No position is too high to be attacked,—no character too pure to be blackened. So inveterate does party spirit become, that it is enough that the leaders of one party favor a particular movement—whether allied to their peculiar views or not—to secure the dogged opposition of the other. It is well known that the extremes of party feeling do not exist in many of the younger dioceses, which have been reared up in poverty and privation, and have not yet “waxed fat and kicked.” It is very desirable to them that they shall not be introduced into any such difficulties; and it is also desirable that, whatever may be done by secret organization, party subjects shall not be thrown like fire-brands into the General Convention to kindle the flame of discord. If the extremists are to have numbers, as well as skill in strategy, to act their will, the peaceable delegations may as well retire from the Convention, for all the good they can accomplish. But this is not all. If they are merely to be in a position of less dignity than others, they can very well put up in humility with their portion. But there are matters upon which the necessities of new countries call for peculiar legislation. The proper regulation of missions, and supply of missionary labor; the providing for foreign immigrants; and other things incident to their condition,—not only call for action for their benefit, but action *according to their views*. It is difficult to convince some of our Eastern friends, that we know where our shoes pinch as well as they do, and that Western missionaries ought to understand Western men and institutions. The General Convention is not called upon to legislate for an aggregate homogeneous body; it is required to provide for scattered local interests; and while all should be represented and provided for, there is no propriety, or justice, in allowing to one section a preponderating influence.

This danger becomes in the highest degree alarming, when we look at the enormous power sought to be vested in the General Convention. If the whole power of original legislation on ecclesiastical subjects is given to it, and also that of defining all offenses and their punishments, and creating courts and modes of trial, we may look in vain for any thing left to the dioceses. Their bishops

and standing committees and conventions become about as powerful as his colored majesty of the Mosquito kingdom under the tutelage of a British diplomatist. The author of the "Law of the Church" very plainly justifies this assumption by claiming, that although the General Convention was a body of diocesan delegates, yet the Constitution is a paramount charter, giving the Convention supreme power in all cases where it is not expressly, and exclusively, vested elsewhere by itself. But we apprehend that there are few dioceses which would submit to such an assumption, or admit that a human institution, adopted to harmonize with our government those outward relations, and those forms and usages, which otherwise would make us less one in Church than in State, should be so invested with almost Divine authority as to entirely destroy the resemblance between our State and Church, and deprive us of the management of our local affairs. The power sought to be taken from the dioceses is one of those which, even on his theory, is now outside of the General Convention's authority. And why is this usurpation to be allowed? A State without a judiciary can not exist. The executive and the judicial functions are absolutely necessary to give life to the legislative. The diocese is one of the primitive Church organizations, and the nucleus of all Church government. Our own organization is modified doubtless from the primitive form in some respects, but only so as to conform to our political condition. Upon what principle is this old organization to be destroyed?

As usual in such cases, this change is sought because there are evils in the present administration of the law of the Church; and this is regarded as the remedy. Instead of following the wise physician's course of watching symptoms and administering what those symptoms call for, the course in question emulates that of the quack, who saves trouble by administering a panacea equally fit for all diseases because suited to none.

Complaints have long and justly been made, that the judicial system of the Church has not worked properly. These complaints have waxed louder and more bitter within the past few years. No one can doubt that reform is needed in this respect. But it does not follow that the remedy lies in enlarging the powers of the General Convention. A glance at the evils complained of will show that they have not necessarily — nor, in our judgment, at all — been caused by

the fact that the dioceses have had control of the court organizations. And we are much mistaken, if those trials which have been had under the laws of the General Convention have caused less remark and animadversion than the trials of presbyters and deacons. Very similar complaints are made of all of them, and the charges made are somewhat indicative of the direction the remedy should take. The subject is no doubt a perplexing one, and many suggestions may be required before the right one is found; but there are very strong objections, at least, to depriving the dioceses of their jurisdiction, while the arguments in favor of it fall short of the mark.

The principal objections to the propriety of the trials which have been had are twofold: *first*, that the trials have not been impartial; and, *second*, that the rules of evidence and of legal construction have not been adhered to. Objections have also been made to the formalities, or neglect of formalities, in some cases.

It is claimed, that by creating an uniform system of judicial proceedings throughout the country, under the direction of the General Convention, all these evils may be avoided. But we submit that there is nothing in the position of the General Convention which can give it an advantage, in this regard, over the dioceses.

It is very clear, that in order to obtain a fair trial at all, it must be had in the vicinity of the place where the offense is committed, for the double purpose of securing the attendance of witnesses on both sides upon the stand (the only satisfactory way of examining them), and of saving to the accused unnecessary travel and expense. So universally has this custom prevailed in this country and England, that it is not to be supposed the Convention would adopt any other idea. This makes it necessary to have the courts also appointed from the same region—to say nothing of the necessity of having the bishop of the diocese treated with some respect, as the spiritual supervisor of the accused, and of the impropriety of sending presbyters into his diocese who are not to be subject to his jurisdiction. In this, to be sure, we are assuming that the General Convention will not abuse its powers—an assumption which for all time to come might be a little dangerous. But, so assuming, let us see how the trial is to be advanced. A court must be framed, so far as clerical members are concerned, from the clergy of the diocese.

When it comes to this, where is there any more likelihood that the canons of the General Convention will secure a better selection than those of the diocese? There is one, and only one, preventive of partiality in the formation of an Ecclesiastical Court; and that is, that it shall not be created for the trial of the particular case. Civil governments have always aimed to provide for impartial trials, by creating permanent tribunals; and in those, the judges form habits of fair-dealing, which, even in cases of great temptation, are generally found to prevent their yielding to it. When courts are organized for the trial of a particular case, they are as likely to embrace those whose opinions are formed and their prejudices heated, as the impartial. But a judge, who knows that a case *may* be brought before him, and *will* be if brought anywhere, will conscientiously refrain from allowing his mind to be swayed unduly, and will keep his judgment for the facts as proved before him. Of course, the usual impediments of interest or consanguinity apply as well to a permanent judge as to one appointed *pro hac vice*. An established court is beyond the influence of a biased appointing power as well as of excited incumbents.

The other evils are so palpably those of ignorance and inexperience, that the only way to overcome them is to provide courts of legal knowledge, and make them permanent enough to familiarize them with the rules of evidence and the forms of practice. And here, too, there is no more difficulty in diocesan than in general legislation. There is certainly no diocese wherein civil and criminal justice are not properly administered in the secular courts. The rules of evidence in Ecclesiastical Courts are substantially the same; and the forms of practice will be none the worse for similar conformity. As much simplicity as is consistent with clearness and accuracy, is acknowledged by the great lights of the law to be very desirable in the forms of procedure; and in both England and America many true reforms have been made on this principle. It would be very strange, if the same intellects which work easily and wisely in the administration of the State laws, can not adapt the same principles to those of the Church. There is no doubt that the clergy are lamentably deficient in that legal knowledge which they absolutely require, to make them proper persons to administer justice. But they are no more, and no less, ignorant in one part of the country than in

another. The great trouble is, that they have not been trained to the performance of this class of duties. This evil can only be overcome in them by education; and, in the meantime, whether the courts are created by the General or Diocesan Conventions, the laity must be called in as co-adjutors, or the clergy must be tried by incompetent tribunals.

Uniformity of procedure is the only tangible advantage to be derived from placing the regulation of the courts and forms of action under the control of the General Convention; and its attainment is the great reason urged by the advocates of the change. But with all respect for them and their opinions, we submit that the advantages are entirely fallacious, while the disadvantages are very serious. We are not without the light of experience on this subject.

While the States of the Union have their own tribunals of general civil and criminal jurisdiction, it was supposed by the founders of our government that there were matters which might, under some circumstances, be unsafe in State Courts, and in which parties ought to have the right, at least, of resort to the Federal Courts. For these, as well as for matters entirely of federal concern, such courts were established in every State. There never was a more ample opportunity offered for establishing a uniform practice. If all the Federal Courts proceeded according to an uniform practice, the State Courts could have, by imitating them, produced a like uniformity. The United States judiciary system was moulded by jurists who have never been surpassed, if they have been equalled. Did they (as the advocates of this new system would doubtless have had them) adopt a uniform system? On the contrary, they deliberately, and with consummate wisdom, rejected such an idea, and required the Federal Courts to conform their proceedings to the local practice of the courts of those States where they were respectively established. And, in so doing, they provided more effectually for the sure administration of even justice,—an end far more desirable than all the forms of man's devising; and they acted upon a sound knowledge of human nature.

In all of the original States, as well as in most of the newer ones, the Common Law prevailed, as well in criminal as in civil matters; and where new offenses were defined by Statute, t

forms and analogies of the Common Law were resorted to, as far as practicable. Here was uniformity to begin with. But long before the Revolution, local usages and circumstances had so modified the law as carried out, that in no two States was there an exact conformity of practice, or even of construction; and, with a general resemblance, there were differences enough to give decided characteristics to the jurisprudence of every State. The same offenses were punishable in each, and the same evidence was required to establish those offenses; but they differed very widely in the constitution of their courts, and in their proceedings. These differences were the natural offspring of the differing genius and circumstances of the people; and the systems which grew up gradually were appropriate and familiar. Had the Federal Courts been subjected to an uniform system, it must have been borrowed from that of one State, and strange to the rest; or new entirely, and strange to all. It is easy to see that its imposition would have appeared like a foreign yoke, and would have aroused against it the bitterest prejudices. Nor could it have been carried out uniformly. Judges would naturally and inevitably have applied to it the sort of construction they were familiar with at home; and it would not have been many years before a system, regular and uniform on paper, would have appeared in practice marked in every State with the idiosyncrasies of the inhabitants. The lumberman of Maine, the fisherman of Massachusetts, the merchant of New York, the planter of Virginia, and the hunter of Kentucky, could not have progressed ten years under such a plan, and made it, at the end of that period, appear alike among them all. The same difficulties will beset any attempt to force uniformity among the dioceses. As murder, theft, and other crimes, were all punished effectually in the different States under different codes, so ecclesiastical offenders may be brought to justice in every diocese, without any exact similarity in procedure. And justice is far more apt to be done where the course is familiar, than where the mind is distracted from the substance to attend to forms which have no essential importance, save as means, and which may, without any sacrifice of principle, be varied at will.

There are substantial reasons why the courts should *not* be dependent on the General Convention instead of the dioceses. The allegiance of every clergyman, in every Christian Church which

